

May 31 10 11 AM '00 Federal Communications Commission

DA 00-1142

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 00-92
Table of Allotments,)	RM-9857
FM Broadcast Stations.)	
(Dos Palos and Livingston, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 17, 2000

Released: May 26, 2000

Comment Date: July 17, 2000

Reply Comment Date: August 1, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of All American Broadcasting, Inc. ("petitioner"), licensee of FM Station KNTD, Channel 240A, Livingston, California, requesting the reallocation of Channel 240A from Livingston to Dos Palos, California, and modification of its authorization accordingly. Petitioner states that it will apply for Channel 240A if it is reallocated to Dos Palos.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Petitioner advises that the requested reallocation of Channel 240A to Dos Palos (pop. 4,196),¹ is mutually exclusive with its present use at Livingston (pop. 7,317). The distance between the two communities is 27.7 kilometers whereas a minimum distance of 115 kilometers is required in this instance.

3. In further support of the proposal petitioner advises that Dos Palos is an incorporated community that is governed by a Mayor and four-member town council, and has its own fire, police, water and sewer services. Additionally, petitioner advises that there are churches, clubs, organizations, residential areas and numerous business establishments located in Dos Palos. Further, petitioner asserts that adoption of its proposal would result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992),² as the

¹ Population figures were taken from the 1990 U.S. Census.

² The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

reallotment will enable Station KNTD to provide a first local aural transmission service to the residents of Dos Palos, whereas Livingston will retain local aural transmission from Stations KLVN, Channel 202A and KYCC, Channel 206A.³ Petitioner acknowledges that there will be a loss of service north of the present KNTD site if its proposal is granted, but that the entire loss area will continue to receive reception service from at least five fulltime stations.⁴ Further, petitioner reports that there is also an area in which the 60 dBu service area of KNTD will be extended as a result of the proposed reallotment. Moreover, petitioner advises that as Dos Palos is not located in or near any urbanized area, no Tuck showing is required for this proposal.⁵

4. A staff engineering review of the proposal confirms that Channel 240A can be allotted to Dos Palos consistent with the requirements of Section 73.207(b)(1) of the Commission's Rules utilizing the petitioner's proposed site located 14.5 kilometers (9.0 miles) northwest of the community at coordinates 37-04-03 NL and 120-44-52 WL. Our review also has determined that the loss area of Channel 240A at Livingston contains 156,405 people within an area of 1,065 square kilometers, while the gain area at Dos Palos contains 29,524 people in an area of 1,739 square kilometers. Therefore, this proposal would produce a net loss of 126,881 people presently served, and a gain of 674 square kilometers. However, we have also confirmed that both the loss area at Livingston and the gain area at Dos Palos are entirely covered by at least five fulltime reception services and therefore are well served areas.

5. In consideration of the above, and on a comparative basis, the petitioner's proposal would provide a first local aural transmission service to Dos Palos (priority three) whereas Livingston will retain local service (priority four). Therefore, we shall propose to reallocate Channel 240A from Livingston to Dos Palos, California, and modify the license for Station KNTD, as requested. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 240A at Dos Palos.

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the communities listed below, as follows:

³ The existence of noncommercial educational stations in a community are considered for purposes of applying Section 307(b) of the Communications Act and determining the number of local transmission services. See Valley Broadcasters, Inc., 5 FCC Rcd 2785 (1990), reversing Kaldor Communications, Inc., 98 FCC 2d 292, 294 n.4 (Rev. Bd. 1984).

⁴ Petitioner reports that service is presently provided to the proposed loss area by Stations KATM, Ch. 277B, Modesto, KOSO, Ch. 226B, Patterson, KHTN, Ch. 284B, Los Banos, KABX, Ch. 248B, Merced, KJMQ, Ch. 223A, Atwater, as well as San Francisco AM Stations KGO (810 khz), and KNBR (680 khz).

⁵ Faye and Richard Tuck, Inc., 3 FCC Rcd 5374 (1988), and Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 1052 (1995).

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Dos Palos, California	--	240A
Livingston, California	240A	--

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before July 17, 2000, and reply comments on or before August 1, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the

person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.